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6   UNITED STATES DISTRICT COURT

7   FOR THE EASTERN DISTRICT OF CALIFORNIA

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9   PAUL CHRISTOPHER & CARREA   Case No. 2:21-cv-00748-JDP (PC)
     CHRISTOPHER, JR.,
10   ORDER GRANTING PLAINTIFFS'
                  Plaintiff,   APPLICATIONS TO PROCEED *IN FORMA*
11   *PAUPERIS*
           v.
12   ECF Nos. 5 & 6
     THE STATE OF CALIFORNIA, *et al.*,
13   SCREENING ORDER THAT PLAINTIFFS:
                  Defendants.
14   (1) FILE AN AMENDED
                                                COMPLAINT, OR
15
                                                (2) STAND BY THEIR COMPLAINT
16   SUBJECT TO A
                                                RECOMMENDATION THAT IT BE
17   DISMISSED

18   ECF No. 1

19   SIXTY-DAY DEADLINE

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21   Plaintiffs have filed a complaint that is addressed to the Sacramento County Superior

22   Court and seeks money damages against the state of California, Governor Gavin Newsom, the

23   California Department of Corrections and Rehabilitation ("CDCR"), CDCR secretary Kathleen

24   Allison, and an unknown number of "Doe" defendants. ECF No. 1 at 1. The crux of the

25   complaint is that correctional officers at California State Prison, Los Angeles County, allowed

26   other inmates to attack Paul Christopher while he was speaking on the phone to his father, Carrea

27   Christopher. The complaint, as currently pled, does not state a cognizable claim, but I will give

28   plaintiffs leave to amend before recommending that it be dismissed. I will also grant both

                                            1

1 applications to proceed *in forma pauperis*. ECF Nos. 5 & 6.

2 **Screening and Pleading Requirements**

3   A federal court must screen a prisoner's complaint that seeks relief against a governmental

4 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable

5 claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a

6 claim upon which relief may be granted, or seeks monetary relief from a defendant who is

7 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

8   A complaint must contain a short and plain statement that plaintiff is entitled to relief,

9 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its

10 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not

11 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.

12 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere

13 possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not

14 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,

15 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that

16 give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264

17 n.2 (9th Cir. 2006) (en banc) (citations omitted).

18   The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404

19 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it

20 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

21 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).

22 However, "'a liberal interpretation of a civil rights complaint may not supply essential elements

23 of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251,

24 1257 (9th Cir. 1997) (*quoting Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

25 **Analysis**

26   Plaintiffs allege that correctional officers at California State Prison, Los Angeles County,

27 allowed or perhaps encouraged other inmates to attack Paul Christopher while he was on the

28 phone. The complaint fails at a fundamental level, however, because it does not describe how

1   each defendant was responsible for the attack. Neither Governor Newsom nor Secretary Allison

2   are alleged to have had any knowledge of or involvement in the incident. And claims for money

3   damages against the State of California and CDCR are barred by the Eleventh Amendment. *See*

4   *Brown v. California Dept. Of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009). Plaintiffs can bring

5   section 1983 claims against individual correctional officers, but those officers must be identified

6   by name. Additionally, claims against those defendants should be brought in the Central District,

7   where the incident giving rise to these claims occurred. If plaintiffs consent to proceed only

8   against the correctional officers allegedly responsible for the attack, I will order that this case be

9   transferred.

10   I will give plaintiffs leave to amend their complaint before recommending dismissal. If

11   plaintiffs decide to file an amended complaint, the amended complaint will supersede the current

12   one. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). This

13   means that the amended complaint will need to be complete on its face without reference to the

14   prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current

15   complaint no longer serves any function. Therefore, in an amended complaint, as in an original

16   complaint, plaintiffs will need to assert each claim and allege each defendant's involvement in

17   sufficient detail. The amended complaint should be titled "Amended Complaint" and refer to the

18   appropriate case number. If plaintiffs do not file an amended complaint, I will recommend that
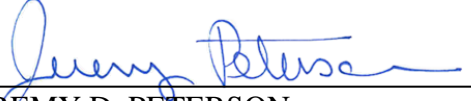
19   this action be dismissed.

20   Accordingly, it is ORDERED that:

21   1.   Plaintiffs' applications to proceed *in forma pauperis*, ECF Nos. 5 & 6, is granted.

22   2. Within sixty days from the service of this order, plaintiffs must either file an

23   Amended Complaint or advise the court they wish stand by their current complaint.

24   3. Failure to comply with this order may result in the dismissal of this action.

25   4. The clerk's office is directed to send each plaintiff a complaint form.[1]

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28   [1] Plaintiffs should submit only a single, joint complaint, however. Each plaintiff is being sent a form because I do not know which is better suited to draft the complaint.

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2   IT IS SO ORDERED.

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4   Dated: August 16, 2021   _____
                                                  JEREMY D. PETERSON
5   UNITED STATES MAGISTRATE JUDGE

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